

State of Arizona
House of Representatives
Fiftieth Legislature
Second Regular Session
2012

CHAPTER 53

House Engrossed
FILED
KEN BENNETT
SECRETARY OF STATE

HOUSE BILL 2396

AN ACT

AMENDING SECTIONS 13-1801 AND 13-1802, ARIZONA REVISED STATUTES; RELATING TO THEFT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 13-1801, Arizona Revised Statutes, is amended to
3 read:

4 13-1801. Definitions

5 A. In this chapter, unless the context otherwise requires:

6 1. "Check" means any check, draft or other negotiable or nonnegotiable
7 instrument of any kind.

8 2. "Control" or "exercise control" means to act so as to exclude
9 others from using their property except on the defendant's own terms.

10 3. "Credit" means an express agreement with the drawee for the payment
11 of a check.

12 4. "Deprive" means to withhold the property interest of another either
13 permanently or for so long a time period that a substantial portion of its
14 economic value or usefulness or enjoyment is lost, to withhold with the
15 intent to restore it only on payment of any reward or other compensation or
16 to transfer or dispose of it so that it is unlikely to be recovered.

17 5. "Draw" means making, drawing, uttering, preparing, writing or
18 delivering a check.

19 6. "Funds" means money or credit.

20 7. "Issue" means to deliver or cause to be delivered a check to a
21 person who thereby acquires a right against the drawer with respect to the
22 check. A person who draws a check with the intent that it be so delivered is
23 deemed to have issued it if the delivery occurs.

24 8. "Material misrepresentation" means a pretense, promise,
25 representation or statement of present, past or future fact that is
26 fraudulent and that, when used or communicated, is instrumental in causing
27 the wrongful control or transfer of property or services. The pretense may
28 be verbal or it may be a physical act.

29 9. "Means of transportation" means any vehicle.

30 10. "Obtain" means to bring about or to receive the transfer of any
31 interest in property, whether to a defendant or to another, or to secure the
32 performance of a service or the possession of a trade secret.

33 11. "Pass" means, for a payee, holder or bearer of a check that
34 previously has been or purports to have been drawn and issued by another, to
35 deliver a check, for a purpose other than collection, to a third person who
36 by delivery acquires a right with respect to the check.

37 12. "Property" means any thing of value, tangible or intangible,
38 including trade secrets.

39 13. "Property of another" means property in which any person other than
40 the defendant has an interest on which the defendant is not privileged to
41 infringe, including property in which the defendant also has an interest,
42 notwithstanding the fact that the other person might be precluded from civil
43 recovery because the property was used in an unlawful transaction or was
44 subject to forfeiture as contraband. Property in possession of the defendant
45 is not deemed property of another person who has only a security interest in

1 the property, even if legal title is in the creditor pursuant to a security
2 agreement.

3 14. "Services" includes labor, professional services, transportation,
4 cable television, computer or communication services, gas or electricity
5 services, accommodation in hotels, restaurants or leased premises or
6 elsewhere, admission to exhibitions and use of vehicles or other movable
7 property.

8 15. "Value" means the fair market value of the property or services at
9 the time of the theft. The value of ferrous metal or nonferrous metal, as
10 defined in section 44-1641, is the average fair market value of the metal as
11 ~~scrap metal~~ in the local area together with the repair or replacement value
12 of any property from which the ~~scrap metal~~ was removed at the time of the
13 theft. Written instruments that do not have a readily ascertained market
14 value have as their value either the face amount of indebtedness less the
15 portion satisfied or the amount of economic loss involved in deprivation of
16 the instrument, whichever is greater. When property has an undeterminable
17 value the trier of fact shall determine its value and, in reaching its
18 decision, may consider all relevant evidence, including evidence of the
19 property's value to its owner.

20 B. In determining the classification of the offense, the state may
21 aggregate in the indictment or information amounts taken in thefts committed
22 pursuant to one scheme or course of conduct, whether the amounts were taken
23 from one or several persons.

24 Sec. 2. Section 13-1802, Arizona Revised Statutes, is amended to read:

25 13-1802. Theft; classification; definitions

26 A. A person commits theft if, without lawful authority, the person
27 knowingly:

28 1. Controls property of another with the intent to deprive the other
29 person of such property; or

30 2. Converts for an unauthorized term or use services or property of
31 another entrusted to the defendant or placed in the defendant's possession
32 for a limited, authorized term or use; or

33 3. Obtains services or property of another by means of any material
34 misrepresentation with intent to deprive the other person of such property or
35 services; or

36 4. Comes into control of lost, mislaid or misdelivered property of
37 another under circumstances providing means of inquiry as to the true owner
38 and appropriates such property to the person's own or another's use without
39 reasonable efforts to notify the true owner; or

40 5. Controls property of another knowing or having reason to know that
41 the property was stolen; or

42 6. Obtains services known to the defendant to be available only for
43 compensation without paying or an agreement to pay the compensation or
44 diverts another's services to the person's own or another's benefit without
45 authority to do so.

1 B. A person commits theft if, without lawful authority, the person
2 knowingly takes control, title, use or management of a vulnerable adult's
3 property while acting in a position of trust and confidence and with the
4 intent to deprive the vulnerable adult of the property. Proof that a person
5 took control, title, use or management of a vulnerable adult's property
6 without adequate consideration to the vulnerable adult may give rise to an
7 inference that the person intended to deprive the vulnerable adult of the
8 property.

9 C. It is an affirmative defense to any prosecution under subsection B
10 of this section that either:

11 1. The property was given as a gift consistent with a pattern of gift
12 giving to the person that existed before the adult became vulnerable.

13 2. The property was given as a gift consistent with a pattern of gift
14 giving to a class of individuals that existed before the adult became
15 vulnerable.

16 3. The superior court approved the transaction before the transaction
17 occurred.

18 D. The inferences set forth in section 13-2305 apply to any
19 prosecution under subsection A, paragraph 5 of this section.

20 E. At the conclusion of any grand jury proceeding, hearing or trial,
21 the court shall preserve any trade secret that is admitted in evidence or any
22 portion of a transcript that contains information relating to the trade
23 secret pursuant to section 44-405.

24 F. Subsection B of this section does not apply to an agent who is
25 acting within the scope of the agent's duties as or on behalf of a health
26 care institution that is licensed pursuant to title 36, chapter 4 and that
27 provides services to the vulnerable adult.

28 G. Theft of property or services with a value of twenty-five thousand
29 dollars or more is a class 2 felony. Theft of property or services with a
30 value of four thousand dollars or more but less than twenty-five thousand
31 dollars is a class 3 felony. Theft of property or services with a value of
32 three thousand dollars or more but less than four thousand dollars is a class
33 4 felony, except that theft of any vehicle engine or transmission is a class
34 4 felony regardless of value. Theft of property or services with a value of
35 two thousand dollars or more but less than three thousand dollars is a class
36 5 felony. Theft of property or services with a value of one thousand dollars
37 or more but less than two thousand dollars is a class 6 felony. Theft of any
38 property or services valued at less than one thousand dollars is a class 1
39 misdemeanor, unless the property is taken from the person of another, is a
40 firearm or is an animal taken for the purpose of animal fighting in violation
41 of section 13-2910.01, in which case the theft is a class 6 felony.

42 H. A person who is convicted of a violation of subsection A, paragraph
43 1 or 3 of this section that involved property with a value of one hundred
44 thousand dollars or more is not eligible for suspension of sentence,
45 probation, pardon or release from confinement on any basis except pursuant to

1 section 31-233, subsection A or B until the sentence imposed by the court has
2 been served, the person is eligible for release pursuant to section
3 41-1604.07 or the sentence is commuted.

4 I. For the purposes of this section, the value of ferrous metal or
5 nonferrous metal includes the amount of any damage to the property of another
6 caused as a result of the theft of the scrap metal.

7 J. In an action for theft of ferrous metal or nonferrous metal:

8 1. Unless satisfactorily explained or acquired in the ordinary course
9 of business by an automotive recycler as defined and licensed pursuant to
10 title 28, chapter 10 or by a scrap metal dealer as defined in section
11 44-1641, proof of possession of scrap metal that was recently stolen may give
12 rise to an inference that the person in possession of the scrap metal was
13 aware of the risk that it had been stolen or in some way participated in its
14 theft.

15 2. Unless satisfactorily explained or sold in the ordinary course of
16 business by an automotive recycler as defined and licensed pursuant to title
17 28, chapter 10 or by a scrap metal dealer as defined in section 44-1641,
18 proof of the sale of stolen scrap metal at a price substantially below its
19 fair market value may give rise to an inference that the person selling the
20 scrap metal was aware of the risk that it had been stolen.

21 K. For the purposes of this section:

22 1. "Adequate consideration" means the property was given to the person
23 as payment for bona fide goods or services provided by the person and the
24 payment was at a rate that was customary for similar goods or services in the
25 community that the vulnerable adult resided in at the time of the
26 transaction.

27 2. "Ferrous metal" and "nonferrous metal" have the same meanings
28 prescribed in section 44-1641.

29 3. "Pattern of gift giving" means two or more gifts that are the same
30 or similar in type and monetary value.

31 4. "Position of trust and confidence" has the same meaning prescribed
32 in section 46-456.

33 5. "Property" includes all forms of real property and personal
34 property.

35 6. "Vulnerable adult" has the same meaning as prescribed in section
36 46-451.

APPROVED BY THE GOVERNOR MARCH 20, 2012.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 20, 2012.

Passed the House February 21, 2012

by the following vote: 57 Ayes,

0 Nays, 2 Not Voting
1 vacant

[Signature]
Speaker of the House

[Signature]
Chief Clerk of the House

Passed the Senate March 15, 2012

by the following vote: 27 Ayes,

3 Nays, 0 Not Voting

[Signature]
President of the Senate

[Signature]
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

19th day of March, 20 12

at 2:37 o'clock P M.

[Signature]
Secretary to the Governor

Approved this 20th day of

March

at 1:06 o'clock P M.

[Signature]
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 20th day of March, 20 12

at 4:53 o'clock P M.

[Signature]
Secretary of State

H.B. 2396